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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

AMP TRUCKING, INC. et al.,

Plaintiffs, Cross-defendants and Appellants,

v.

NARVINDER SINGH,

Defendant, Cross-complainant and Respondent.

F075557

(Super. Ct. No. 15CECG01720)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Alan M. Simpson, Judge.

Campagne & Campagne, Justin T. Campagne and Eric M. Kapigian, for Plaintiffs, Cross-defendants and Appellants.

Peter Sean Bradley for Defendant, Cross-complainant and Respondent.

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The only disputed issue in this appeal is whether the wage-and-hour related claims in the cross-complaint of defendant and cross-complainant Narvinder Singh (hereafter Singh) are arbitrable under an arbitration clause contained in a contract between the parties titled Independent Contractor Sub-Haul Agreement. The trial court held they were not and denied the petition to compel arbitration filed by plaintiffs and cross-defendants AMP Trucking, Inc. and Jagjit Singh Pannu (hereafter collectively AMP). We agree and affirm.

FACTS AND PROCEDURAL HISTORY

When the petition to compel arbitration was filed, AMP's complaint and Singh's request for leave to file his cross-complaint (subsequently granted) were before the court. AMP's complaint alleged that in 2013, AMP and Singh entered into a partnership or joint venture in which AMP was to purchase equipment and Singh was to operate it in a hauling business. The equipment was two trucks, three trailers, and a car. According to the complaint, AMP spent about $460,000 on the equipment and other expenses of the venture from 2013 to 2015, after which Singh absconded with the equipment and converted it to his own use. The complaint alleged causes of action for breach of fiduciary duty, unfair competition under Business and Professions Code section 17200, and following negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, accounting, and conversion. The complaint prayed for compensatory damages, punitive damages, an injunction prohibiting Singh from using or concealing the misappropriated property, an order to return the property, a constructive trust or equitable lien on the property, and attorneys' fees.

Singh's cross-complaint alleged that he was an employee of AMP from 2009 to 2013. His duties were "dispatching, communications with AMP's drivers and customers, billing for AMP's services and other duties as assigned by AMP." He had a salary of $3,500 (presumably per month, though the cross-complaint does not specify) from 2009 to early 2013, reduced to $3,000 at a point in 2013. Singh worked "approximately 15 to

20 hours a day, six days a week," but was paid neither the minimum wage nor overtime pay. He also did not get meal breaks. The cross-complaint alleged violations of California statutes and regulations requiring payment of the minimum wage and overtime, and provision of meal breaks. It prayed for damages and attorneys' fees.

AMP's petition to compel arbitration asserted that the claims in the complaint and cross-complaint were all subject to arbitration pursuant to an arbitration agreement. This arbitration agreement was part of a contract titled "Independent Contractor Sub-Haul Agreement," allegedly executed by the parties in 2009. Under the contract, AMP (termed the "Prime Carrier") promised to provide hauling jobs to Singh, doing business as Prince Transport (the "Sub-Hauler"). Singh promised to carry out the jobs as an independent contractor, using his own trucks. AMP would retain 7 percent of the price paid by the customer, plus a fee for dispatching services, and pay the remainder to Singh. Separate clauses specified that Singh would perform the work only as an independent contractor, and not as an employee, joint venturer, or partner. According to the petition to compel arbitration, Singh provided hauling services under this contract from 2009 to 2013.

The arbitration clause in the Independent Contractor Sub-Haul Agreement read as follows:

> "Dispute Resolution. Any claims or dispute resolution procedure incorporated in a written agreement between the Prime Carrier and the Customer shall be deemed incorporated into this Agreement and shall apply to any disputes arising hereunder. In the absence of a claims or dispute resolution procedure in the Prime Carrier contract, **all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof may, at the sole election of the Prime Carrier, be decided by binding arbitration** in Fresno County, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in existence. The foregoing agreement of Sub-hauler to arbitrate at the sole election of the Prime Carrier shall be specifically enforceable under California law. Any award rendered by the arbitrators shall be subject to review only as provided in California law, and judgment may be entered on it in accordance with that law in any court having jurisdiction to do so. The

> Prime Carrier reserves the right to litigate any claim, dispute, or other matter in question in any court of competent jurisdiction at its sole election. The parties agree that any such litigation will be venued in the County of Fresno State of California. The prevailing party in any action at law or in equity, or in any arbitration matter commenced hereunder, will be entitled to reasonable attorney fees and reimbursement of its costs incurred in addition to any other relief to which that party may be entitled." (Emphasis added.)

In a declaration submitted as part of his opposition papers, Singh described his relationship with AMP Trucking and with Pannu. Singh stated that from December 2009 to December 2013, he worked for AMP in two different capacities. First, he was an employee of AMP, working as a dispatcher. He worked at AMP's business offices and at Pannu's home office, using the company's phones and computers to direct AMP's truck drivers on pickups and deliveries. He was supervised by Pannu, who set his hours and determined the policies he was to follow. In addition to the dispatching duties, Pannu gave Singh responsibility for billing, banking, getting food, and other tasks. AMP paid Singh a flat salary of $3,500 per month, reduced in the final year to $3,000 per month. Second, Singh owned his own trucks and hired drivers for them under the fictitious business name of Prince Transport. He subcontracted with AMP for hauling jobs, and AMP dispatched his trucks. The subcontracting arrangement was oral until 2013, when Pannu presented Singh with the Independent Contractor Sub-Haul Agreement. According to Singh, the document was altered after its execution to make it appear to have been signed in 2009. There was never a partnership or a joint venture between Singh and AMP Trucking or Pannu.

Replying to Singh's opposition, Pannu submitted a declaration stating that AMP Trucking was a truck dispatching service. From 2009 to 2013, AMP Trucking dispatched Singh's Prince Transport trucks on hauling jobs throughout the United States, pursuant to the Independent Contractor Sub-Haul Agreement. Pannu's declaration did not deny or otherwise remark upon the assertion in Singh's declaration that, in addition to acting as AMP's subcontractor in providing trucks and drivers to be dispatched by AMP, Singh

also was employed by AMP, and supervised by Pannu, as a dispatcher dispatching AMP's trucks and carrying out other tasks on AMP's behalf.

These two declarations, the written agreement, and the verified petition to compel arbitration itself are the only materials of an evidentiary nature appearing in the appellate record that are relevant to the question of whether all aspects of the business relationship between AMP and Singh were encompassed by the sub-hauling contract or whether, instead, there was a separate relationship that fell outside the terms of that contract, in which Singh performed dispatching and other services for AMP. A hearing on the petition was held on December 13, 2016, but the appellate record includes no reporter's transcript of the hearing.

Immediately prior to that hearing, the court prepared a tentative ruling on the petition to compel arbitration. The tentative ruling first addressed the petition's request for arbitration of the claims in AMP's complaint. AMP claimed that there was a partnership or joint venture between it and Singh, and that Singh violated duties arising from that relationship. The petition to compel arbitration sought to apply the arbitration clause in the sub-hauling contract to this alleged partnership or joint venture, even though that contract explicitly stated it did not create a partnership or joint venture; even though the arbitration clause explicitly stated that it applied to disputes arising out of, or related to, the contract or breach of the contract; and even though the alleged partnership or joint venture, involving AMP buying equipment with which it and Singh would operate a new business as partners, clearly was distinct from the sub-hauling relationship created by the contract. Observing that "when parties have entered into **unrelated contracts** that do not specifically incorporate terms from one to the other, an arbitration clause governing one contractual relationship will not be imposed in the other relationship," the court tentatively denied the petition to compel arbitration as it applied to the claims in AMP's complaint.

Turning to the applicability of the arbitration clause to the employment dispute alleged in the cross-complaint, the court expressed its understanding that that dispute was the subject of a pending claim filed with the Division of Labor Standards Enforcement (DLSE). Applying the doctrine of primary jurisdiction, the court tentatively bifurcated and stayed the cross-action. After the hearing, the court adopted the tentative ruling as final.

Singh subsequently filed a motion for reconsideration of the ruling on the cross-complaint. It informed the court that the DLSE claim had, in fact, been dismissed without prejudice, and consequently was no longer a pending matter before the agency. The court granted the motion for reconsideration and ruled that its prior ruling would stand, except that the cross-complaint would not be bifurcated and the petition to compel arbitration would be denied as to that matter as well. The court implied, but did not expressly state, that the reasoning it had applied before—that the arbitration clause did not encompass a contractual relationship distinct from and independent of the contract containing the arbitration clause, absent incorporation by reference—applied also to the alleged employer-employee dispute.

AMP appealed. In its opening brief, it concedes that the claims in its complaint were based on a separate dispute, unrelated to the sub-hauling contract, and expressly declines to challenge the trial court's ruling that that dispute was not subject to arbitration. The appeal thus concerns the arbitrability of the claims in the cross-complaint alone.

DISCUSSION

To the extent a challenge to the denial of a petition to compel arbitration depends on an issue of law, we review the decision under the de novo standard. To the extent factual findings of the trial court are at issue, we apply the substantial evidence standard. (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.) As will be seen, AMP's challenge here goes in part to a question of law—the interpretation

of the arbitration clause to determine whether its scope includes anything outside the sub-hauling arrangement—and in part to a question of fact—whether the services Singh allegedly rendered as an employee were really part of the sub-hauling arrangement.

Code of Civil Procedure section 1281.2 governs petitions to compel arbitration. It provides that a court must grant such a petition "if it determines that an agreement to arbitrate the controversy exists," unless certain exceptions, none of which need be addressed here, apply. The party seeking to compel arbitration has the burden of proving by a preponderance of the evidence that an agreement to arbitrate the controversy exists. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 (*Engalla*); *Larian v. Larian* (2004) 123 Cal.App.4th 751, 759-760 (*Larian*).) An agreement to arbitrate the controversy exists if the language of the arbitration clause shows the dispute in question, as reflected in the relevant pleading, is encompassed within the scope of the clause. (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 229; *Larian, supra*, 123 Cal.App.4th at pp. 759-760.) California law and federal law both strongly favor arbitration, and an arbitration clause should be interpreted to require arbitration if there are doubts about whether the dispute is within its scope (for instance, because the clause is ambiguous); put another way, arbitration should be compelled unless it can be said with assurance that the arbitration clause is not susceptible of a reasonable interpretation under which it encompasses the dispute in question. (*Hayes Children Leasing Co. v. NCR Corp.* (1995) 37 Cal.App.4th 775, 788; *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686.) But in the end, a party can be compelled to arbitrate only those issues it has agreed to arbitrate. (*Hayes Children Leasing, supra*, 37 Cal.App.4th at p. 787.)

If the moving party makes the above showing, the burden shifts to the party resisting arbitration to prove facts that would constitute a defense. (*Engalla, supra*, 15 Cal.4th at p. 972.)

Before moving on to apply the relevant principles to this case, we pause to take note of case law that is in conflict or tension with the above discussion of burdens of proof. It has been held that "[t]he party opposing arbitration has the burden to show that the agreement does not apply to the dispute." (*Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651, 659 (*Khalatian*); see *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686-687 ["It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause *cannot* be interpreted to require arbitration of the dispute."].) It is unclear how pronouncements such as these can be reconciled with, for example, the holding that "[b]efore a party may be compelled to arbitrate a claim, the petitioning party has the burden of proving the existence of a valid arbitration clause and the dispute is covered by the agreement." (*Larian, supra,* 123 Cal.App.4th at p. 760.) As will be seen, we need not take sides on this point, for here it is true both that AMP *has not* shown that the arbitration clause in the Independent Contractor Sub-Haul Agreement *does* apply to the employment claims in the cross-complaint, and that Singh *has* shown it *does not* apply.

By its terms, the arbitration clause in the Independent Contractor Sub-Haul Agreement allows AMP to demand arbitration of "all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof." In its briefs, AMP insists that the arbitration clause "provided that any disputes arising out of the Agreement *or the parties[']* working relationship" (italics added) were subject to arbitration, but this simply is not so. The italicized words neither appear in nor are implied by anything in the arbitration clause.

Consequently, to be subject to the arbitration agreement, the dispute alleged in Singh's cross-complaint must have arisen out of, or be related to, the Independent Contractor Sub-Haul Agreement, or a breach of it. There is nothing ambiguous about the contractual language on this point.

AMP did not make this showing. The cross-complaint alleged that AMP failed to pay Singh properly for his work as AMP's dispatcher. The Independent Contractor Sub-Haul Agreement does not reference any work as a dispatcher, and AMP presented no declaration or other evidence to show that the subject matter of the agreement—Singh hauling on behalf of AMP—included work by Singh as AMP's dispatcher. Pannu's declaration did not so assert, nor did AMP's verified petition to compel. In fact, the written agreement provided that Singh would pay AMP a dispatching fee for each load, implying that AMP, not Singh, would be providing dispatching services under the agreement. In its appellate briefs, AMP does not claim the agreement included any dispatching work by Singh on behalf of AMP. It asserts instead that the arbitration clause covered all aspects of the parties' working relationship; but as noted above, there is no language in the agreement that would give any support to that assertion.

At the same time, Singh *has* made a showing that the work described in the cross-complaint formed no part of the work that is the subject matter of the Independent Contractor Sub-Hauling Agreement. Singh's declaration described the dispatching and other work he performed for AMP on AMP's premises, at AMP's direction, according to AMP's schedule, using AMP's equipment. The Independent Contractor Sub-Haul Agreement describes no work of this sort. It instead describes the provision by Singh of trucks and drivers to carry out hauling jobs for AMP's customers. It also refers to Singh paying AMP a fee for dispatching, indicating that dispatching was not a service Singh was to provide in connection with the hauling covered by that agreement.

For the above reasons, we conclude both that AMP did not show that "an agreement to arbitrate *the* controversy" (Code Civ. Proc., § 1281.2, italics added)—i.e., the controversy raised by the cross-complaint—existed, and that Singh affirmatively showed the arbitration agreement in the Independent Contractor Sub-Haul Agreement did not apply to that controversy.

AMP advances a number of counterarguments. First, pointing out that the cross-complaint maintains AMP wrongly classified Singh as an independent contractor, not an employee, AMP contends that the dispute raised in the cross-complaint arose out of the Independent Contractor Sub-Haul Agreement because that agreement stated that Singh was an independent contractor, not an employee, partner or joint venturer. But the cross-complaint raises a dispute about a contractual relationship different from the one created by the Independent Contractor Sub-Haul Agreement: one in which Singh acted as AMP's dispatcher. As we have said, the Independent Contractor Sub-Haul Agreement and its arbitration clause do not govern that relationship. This is so regardless of whether Singh is right or wrong in claiming it was an employee-employer relationship. "Where … the parties have separate contractual relationships … an arbitration clause which governs one contractual relationship cannot be imposed in the other relationship," absent the incorporation of one contract's terms into the other. (*Marsch v. Williams* (1994) 23 Cal.App.4th 250, 256.)

Next, AMP relies on *Khalatian, supra,* 237 Cal.App.4th 651. Khalatian was a shuttle van driver for an airport shuttle service. His work as a driver was the subject of an agreement by which the parties agreed that he was an independent contractor, not an employee, in that work, and that any disputes arising out of or related to the agreement were subject to arbitration, including any claim that the agreement was invalid. (*Id.* at pp. 655, 659.) Khalatian sued, claiming he was an employee, the defendants committed wage and hour violations, and the agreement was invalid because it misclassified him as an independent contractor in order to evade the wage and hour laws. (*Id.* at pp. 655-656, 659.) The Court of Appeal reversed an order denying the defendants' motion to compel arbitration. It held that the arbitration clause covered Khalatian's claims even though they were statutory and asserted the invalidity of the contract. (*Id.* at p. 660.)

Despite some superficial similarities to this case, *Khalatian* is not on point. In *Khalatian*, the agreement containing the clause calling for arbitration of all claims arising

under it was the agreement that purported to govern the work over which the plaintiff was suing. In this case, the agreement containing the arbitration clause does not purport to govern the work over which Singh is suing. There were two contractual relationships between Singh and AMP: the sub-hauling relationship governed by the written agreement, and the dispatching relationship claimed to be the subject of a separate, unwritten employment contract. AMP has not even claimed that Singh acted as a dispatcher pursuant to the written agreement. In *Khalatian*, only one relationship—in which Khalatian worked for the defendants as a driver—was alleged by the parties. The dispute arose out of that relationship, and thus was related to the agreement that purported to form and govern it.

Finally, AMP appears to suggest that we are bound to reverse the denial of the petition to compel arbitration because the trial court's written ruling did not give clear reasons why the court refused to compel arbitration on the claims in the cross-complaint (as opposed to those in the complaint, which the court expressly held to fall outside the arbitration clause). AMP relies on *Zak v. State Farm Mut. Liability Ins. Co.* (1965) 232 Cal.App.2d 500 (*Zak*). There, the Court of Appeal reversed a defense judgment following the dismissal of certain causes of action, and allowed those causes of action to go forward on remand. (*Id.* at p. 501.) Concluding that the grounds upon which the dismissal had been ordered were erroneous, the appellate court turned its attention to the general proposition that "'a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason.'" (*Id.* at p. 506.) It went on to explain that, the ground for the trial court's ruling being mistaken, factual questions remained, needing to be resolved in the first instance, which would determine whether the causes of action in question were viable. Since this was so, the appellate court applied what it described as an exception to the general rule that the trial court's mere wrong reasoning will not result in reversal on appeal so long as correct reasoning for the same result is available. (*Id.* at pp. 506-507.) It formulated the exception as follows:

"Where the record reflects that the trier of fact has not considered a theory under which the evidence is conflicting, the reviewing court cannot rely on that theory to sustain the action of the lower court." (*Id.* at p. 506.) In other words, the appellate court could not uphold the judgment by resolving the conflict in the evidence for itself and then adopting a theory consonant with its own factual finding.

This discussion in *Zak* amounts to no more than the common-sense proposition that if a trial court has relied on erroneous reasoning to resolve an issue, and the correct resolution of that issue ultimately cannot be made without certain factual findings based on conflicting evidence, *and* the record reveals the trial court did not make those findings one way or the other and thus could not have relied on them, the proper disposition on appeal is to reverse and remand. In other words, if the resolution of an issue requires a factual finding upon conflicting evidence, and the record precludes an assumption that the court made that finding, then the matter should be remanded rather than affirmed, even when the record contains sufficient evidence to support the necessary finding.

AMP does not point to any erroneous reasoning relied on by the trial court. Its argument is that the court failed to articulate its reasoning with respect to arbitration of the claims in the cross-complaint. The mere omission of a statement of reasons is not grounds for reversal of a judgment. So far as the appellate record indicates, a statement of decision was not even requested. For the reasons stated above, the record is sufficient to support the ruling on the ground that the dispute raised by the cross-complaint falls outside the scope of the arbitration clause in the Independent Contractor Sub-Haul Agreement. In fact, the record would *not* be sufficient to support the contrary ruling. The discussion in *Zak* is irrelevant.

For all these reasons, the trial court did not err in denying the petition to compel arbitration.

DISPOSITION

The ruling denying the petition to compel arbitration is affirmed. Costs on appeal are awarded to defendant and cross-complainant Narvinder Singh.

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SMITH, J.

WE CONCUR:

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PEÑA, Acting P.J.

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DESANTOS, J.